

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL DUNSMORE, ERNEST
ARCHULETA, ANTHONY
EDWARDS, REANNA LEVY, JOSUE
LOPEZ, CHRISTOPHER NELSON,
CHRISTOPHER NORWOOD, and
LAURA ZOERNER, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

SAN DIEGO COUNTY SHERIFF'S
DEPARTMENT, COUNTY OF SAN
DIEGO, CORRECTIONAL
HEALTHCARE PARTNERS, INC.,
TRI-CITY MEDICAL CENTER,
LIBERTY HEALTHCARE, INC.,
MID-AMERICA HEALTH, INC.,
LOGAN HAAK, M.D., INC., SAN
DIEGO COUNTY PROBATION
DEPARTMENT, and DOES 1 to 20,
inclusive,

Defendants.

Case No.: 20-cv-00406-AJB-WVG

**ORDER GRANTING MOTIONS TO
DISMISS SECOND AMENDED
COMPLAINT**

(Doc. Nos. 109, 125, 133, 134)

Presently pending before the Court is Defendants Logan Haak, M.D., Inc., Liberty Healthcare, Inc., County of San Diego, and Correctional Healthcare Partners, Inc.'s (collectively, "Defendants") motions to dismiss. (Doc. Nos. 109, 125, 133, 134.) The motions are fully briefed, (Doc. Nos. 136, 144, 160, 170, 174, 177, 178, 187), and the

1 matter is suitable for determination on the papers. For the reasons set forth below, the Court
 2 **GRANTS** Defendants’ motions to dismiss.

3 **I. BACKGROUND**

4 Plaintiffs Darryl Dunsmore, Ernest Archuleta, Anthony Edwards, Reanna Levy,
 5 Josue Lopez, Christopher Nelson, Christopher Norwood, and Laura Zoerner (collectively,
 6 “Plaintiffs”) are current or former inmates of San Diego County Jail facilities (the “Jail”),
 7 operated by Defendants San Diego County Sheriff’s Department (“Sheriff’s Department”)
 8 and County of San Diego (the “County”) (collectively, “County Defendants”). Correctional
 9 Healthcare Partners, Inc. (“CHP”) and Liberty Healthcare, Inc., (collectively, “Contractor
 10 Defendants”) provide security, medical care, mental health care, and dental care to the
 11 individuals incarcerated in the Jail. Plaintiffs bring this action on behalf of “themselves
 12 and the approximately 4,000 incarcerated people who are similarly situated on any given
 13 day” to “remedy the dangerous, discriminatory, and unconstitutional conditions in the Jail.”
 14 (Second Amended Complaint (“SAC”), Doc. No. 81, ¶ 6.) Specifically, Plaintiffs contend
 15 Defendants’ policies and practices contribute to the high death rates in the Jail, which “has
 16 for years exceeded the rates nationally and in other large California jails, [and] it reached
 17 chilling heights in 2021 when 18 people died, amounting to a death rate of 458 incarcerated
 18 people per 100,000.” (*Id.* ¶ 1.)

19 To this point, the California State Auditor’s February 3, 2022 report found that “the
 20 Sheriff’s Department has failed to adequately prevent and respond to the deaths of
 21 individuals in its custody.” (*Id.* ¶ 2 (quoting Doc. No. 119-3 at 44).) These deaths are “often
 22 attributable to suicide, overdoses, homicide, and medical neglect, and many involved
 23 persons with a mental illness.” (*Id.* ¶ 3.) As such, Plaintiffs seek declaratory and injunctive
 24 relief against Defendants for their “deliberate indifference to their obligation to provide
 25 incarcerated people with minimally adequate medical care[,]” (*id.* ¶ 7); “deliberate
 26 indifference to their failure to provide incarcerated people with minimally adequate mental
 27 health care[,]” (*id.* ¶ 9); “systemic and willful discrimination against, and failure to provide
 28 reasonable accommodations in, programs, services, and activities to incarcerated people in

the Jail who have disabilities[,]” (*id.* ¶ 10); “deliberate indifference to their failure to ensure the safety and security of incarcerated people against other unreasonably dangerous conditions in the Jail[,]” (*id.* ¶ 11); “deliberate indifference to their failure to provide incarcerated people with adequate dental care[,]” (*id.* ¶ 12); and “interference with Plaintiffs’ right to effective assistance of counsel and right to access the courts” (*id.* ¶ 13).

The SAC alleges violations of (1) the Eighth Amendment, pursuant to 42 U.S.C. § 1983; (2) the Fourteenth Amendment, pursuant to § 1983; (3) Article 1, Section 7 of the California Constitution; (4) Article 1, Section 17 of the California Constitution; (5) the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12132, 12203; (6) the ADA, § 12188; (7) the Rehabilitation Act, 29 U.S.C. § 794; (8) the Unruh Civil Rights Act, Cal. Civ. Code § 51 et seq.; (9) Cal. Gov’t Code § 11135; (10) the Sixth Amendment, pursuant to 42 U.S.C. § 1983; (11) Section 15 of the California Constitution; (12) the Fourteenth Amendment, pursuant to § 1983; (13) Section 7 of the California Constitution; (14) the ADA for discrimination contributing to unnecessary incarceration and institutionalization; and (15) Cal. Gov’t Code § 11135 for discriminatory impact. (*Id.* ¶¶ 398–464.)

II. REQUESTS FOR JUDICIAL NOTICE

Federal Rule of Evidence 201(b) permits judicial notice of any fact “not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot be questioned.” Fed. R. Evid. 201(b); *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018). Moreover, “[a] district court ruling on a motion to dismiss may consider a document the authenticity of which is not contested, and upon which the plaintiff’s complaint necessarily relies.” *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998), superseded by statute on other grounds as recognized in *Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 681 (9th Cir. 2006); *Kniewel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005). Further, when ruling on a Rule 12(b)(6) motion to dismiss, courts may consider

1 material properly subject to judicial notice without converting the motion into one for
2 summary judgment. *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994).

3 **A. Plaintiffs' Requests for Judicial Notice**

4 To begin, Plaintiffs request judicial notice of three contracts, each with San Diego
5 County. (Doc. Nos. 136-1, 160-1, 170-1.) Specifically, these contracts are between San
6 Diego County and Defendants Haak, Liberty, and CHP, respectively. (*See id.*) Defendant
7 CHP joins in Plaintiffs' request for judicial notice of its contract with San Diego County.
8 (*See* Doc. No. 135 at 2, 4.) However, the Court does not rely on these documents in
9 reaching its conclusion below. Accordingly, the Court **DENIES AS MOOT** Plaintiffs'
10 requests for judicial notice as to these exhibits.

11 **B. CHP's Request for Judicial Notice**

12 Next, CHP requests judicial notice of several documents. (Doc. Nos. 135, 179.) First,
13 CHP requests the Court to take judicial notice of the California Secretary of State's
14 business entity records for CHP, which shows its date of incorporation as June 4, 2020.
15 (Doc. No. 135 at 2.) Plaintiffs do not oppose this request. Under Rule 201, the court can
16 take judicial notice of "[p]ublic records and government documents available from reliable
17 sources on the Internet," such as websites run by governmental agencies. *See Gerritsen v.*
18 *Warner Bros. Ent. Inc.*, 112 F. Supp. 3d 1011, 1033 (C.D. Cal. 2015); *see also Daniels-*
19 *Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 999 (9th Cir. 2010) (taking judicial notice of
20 information on the websites of two school districts because they were government entities).
21 The Court will therefore **GRANT** CHP's request for judicial notice of the business entity
22 profile on the California Secretary of State's website.

23 CHP further requests judicial notice of (1) the existence of the County of San
24 Diego's business record, a termination letter, which shows the date of termination of
25 contract number 563402 of May 31, 2022; and (2) the existence of the service agreement
26 between the County of San Diego and NaphCare, Inc. and NaphCare of San Diego, LLC
27 (collectively, "NaphCare"), which identifies the initial term of such agreement as
28 commencing on June 1, 2022. (Doc. No. 179 at 2.) However, the Court does not rely on

1 these documents in reaching its conclusion below. Accordingly, the Court **DENIES AS**
 2 **MOOT** CHP's requests for judicial notice as to these exhibits.

3 **III. LEGAL STANDARD**

4 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the pleadings
 5 and allows a court to dismiss a complaint upon a finding that the plaintiff has failed to state
 6 a claim upon which relief may be granted. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir.
 7 2001). The court may dismiss a complaint as a matter of law for: "(1) lack of cognizable
 8 legal theory or (2) insufficient facts under a cognizable legal claim." *SmileCare Dental*
 9 *Grp. v. Delta Dental Plan of Cal.*, 88 F.3d 780, 783 (9th Cir. 1996) (citation omitted).
 10 However, a complaint survives a motion to dismiss if it contains "enough facts to state a
 11 claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
 12 (2007).

13 Notwithstanding this deference, the reviewing court need not accept legal
 14 conclusions as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It is also improper for the
 15 court to assume "the [plaintiff] can prove facts that [he or she] has not alleged." *Associated*
 16 *Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526
 17 (1983). On the other hand, "[w]hen there are well-pleaded factual allegations, a court
 18 should assume their veracity and then determine whether they plausibly give rise to an
 19 entitlement to relief." *Iqbal*, 556 U.S. at 679. The court only reviews the contents of the
 20 complaint, accepting all factual allegations as true, and drawing all reasonable inferences
 21 in favor of the nonmoving party. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002),
 22 superseded by statute on other grounds, ADA Amendments Act of 2008, Pub. L. No. 110–
 23 325, §§ 4(a), 8, 122 Stat. 3555.

24 **IV. DISCUSSION**

25 The Second Amendment Complaint brings fifteen causes of action, seeking
 26 injunctive and declaratory relief. Defendants Dr. Haak, Liberty, the County, and CHP each
 27 move to dismiss Plaintiffs' SAC pursuant to Federal Rule of Civil Procedure 12(b)(6).

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1 **A. Claim One: Eighth Amendment**

2 Individuals in state custody have a constitutional right to adequate medical
3 treatment. *See Estelle v. Gamble*, 429 U.S. 97, 104–05 (1976). For inmates serving
4 custodial sentences following a criminal conviction, that right is part of the Eighth
5 Amendment’s guarantee against cruel and unusual punishment. *Id.* However, pretrial
6 detainees have not yet been convicted of a crime and therefore are not subject to
7 punishment by the state. Accordingly, their rights arise under the Fourteenth Amendment’s
8 Due Process Clause. *Bell v. Wolfish*, 441 U.S. 520, 535–36 n.16 (1979). The specific right
9 at issue matters, because unlike the Eighth Amendment, the Fourteenth Amendment does
10 not require a plaintiff to prove a defendant’s state of mind. *Kingsley v. Hendrickson*, 576
11 U.S. 389, 395–97 (2015).

12 Plaintiffs allege in their Second Amended Complaint that they are pretrial detainees
13 and do not provide authority for the proposition that the cruel and unusual punishment
14 provision extends to persons other than convicted prisoners. Additionally, Plaintiffs’ rights
15 may be vindicated by the Fourteenth Amendment, which is referenced in the second claim.
16 Accordingly, they currently plead themselves out of a viable Eighth Amendment claim. As
17 such, the Court **GRANTS** Defendant CHP’s motion to dismiss Plaintiffs’ Eighth
18 Amendment claim as to all defendants **WITHOUT LEAVE TO AMEND**.

19 **B. Claim Eight: Unruh Civil Rights Act Against County of San Diego**

20 The County moves to dismiss Plaintiffs’ eighth claim for violation of the Unruh Civil
21 Rights Act, Cal. Civ. Code § 51, et seq., because county jails are not considered “business
22 establishments” and thus the Unruh Act does not apply to it. (Doc. No. 133 at 21.) Plaintiffs
23 concede that a claim under the Unruh Act does not lie against the County. (Doc. No. 177
24 at 8.) Thus, the Court **GRANTS** the County’s motion to dismiss the eighth claim against
25 it **WITH PREJUDICE**. *See Taormina v. Cal. Dep’t of Corr.*, 946 F. Supp. 829, 834 (S.D.
26 Cal. 1996) (holding a prison does not qualify as a business entity under Cal. Civ. Code
27 § 51); *Wilkins-Jones v. Cnty. of Alameda*, No. C 08-1485 MHP, 2010 WL 4780291, at *9
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(N.D. Cal. Nov. 16, 2010) (finding defendant County of Alameda was not liable under Unruh Act).

C. Shotgun Pleading

Regarding the remainder of the SAC, Plaintiffs fall short of providing allegations that are plausible. Plaintiffs' 223-page SAC "incorporate[s] by reference" the preceding paragraphs without regard to the relevancy of the earlier allegations or how they relate to each claim. This is "shotgun pleading." *See Paylor v. Hartford Fire Ins. Co.*, 748 F.3d 1117, 1126 (11th Cir. 2014).

The allegations under the individual claims are also inadequate. These claims are conclusory and lack specificity. For example, the first paragraph of the first claim reincorporates the 397 preceding paragraphs while the two remaining paragraphs conclude that Defendants subject Plaintiffs "to a substantial risk of harm and injury . . . and have condoned or been deliberately indifferent to such conduct." (SAC ¶¶ 399–400.) "[M]ere conclusory statements, do not suffice" for a pleading. *Ashcroft*, 556 U.S. at 678.

Many courts, including this one, have sharply criticized shotgun pleading. *See Mason v. Cnty. of Orange*, 251 F.R.D. 562, 563 (C.D. Cal. 2008). This criticism is amply justified, as "[e]xperience teaches that, unless cases are pled clearly and precisely, issues are not joined, discovery is not controlled, the trial court's docket becomes unmanageable, the litigants suffer, and society loses confidence in the court's ability to administer justice." *Anderson v. Dist. Bd. of Trustees of Cent. Fla. Cmty. Coll.*, 77 F.3d 364, 367 (11th Cir. 1996). "Judges are not like pigs, hunting for truffles buried in briefs." *See United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991). Here, Plaintiffs' myriad of claims and shotgun pleading prevents the Court from determining the plausibility of its allegations and from further analyzing the arguments. Therefore, the Court **DISMISSES** the SAC **WITH LEAVE TO AMEND**.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendants' motions to dismiss. Going forward, Plaintiffs are directed to file a new, more specific complaint and designate

1 the specific facts that underlie each claim, and the Defendant(s) to which a claim is
2 directed. Should Plaintiffs choose to do so, where leave is granted, they must file an
3 amended complaint curing the deficiencies noted herein by **October 28, 2022**.

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5 **IT IS SO ORDERED.**

6 Dated: September 27, 2022

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8 Hon. Anthony J. Battaglia
9 United States District Judge
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